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Carol Hoffman v. Life Insurance Co. of North America : Brief of Respondent

Utah Supreme Court

M. David Eckersley; Attorney for Plaintiff;
H. James Clegg; Attorney for Respondent;

IN THE SUPREME COURT

OF THE STATE OF UTAH

CAROL HOFFMAN,

Plaintiff and
Appellant,

vs.

Case No. 18184

LIFE INSURANCE COMPANY OF
NORTH AMERICA,

Defendant and
Respondent.

RESPONDENT'S BRIEF

APPEAL FROM THE DISTRICT COURT FOR THE
THIRD JUDICIAL DISTRICT FOR SALT LAKE COUNTY

HONORABLE DEAN E. CONDOR, DISTRICT JUDGE

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STATEMENT OF THE NATURE OF THE CASE

This is an action for insurance proceeds under an accidental death insurance policy covering Louis Hoffman.

DISPOSITION IN LOWER COURT

This case was tried to the Honorable Dean E. Condor who found that the death of Louis Hoffman was not accidental. Judgment was entered for defendant.

RELIEF SOUGHT ON APPEAL

Respondent Life Insurance Company of North America requests that this Court affirm the Findings, Conclusions and Judgment of the Trial Court.

STATEMENT OF FACTS

Appellant Carol Hoffman is the owner of a group accidental death insurance policy provided through an employment program covering my husband Louis Hoffman ("Louis"). As defined in the policy, an accidental death is a death "resulting directly and independently of all other causes from bodily injuries caused by accident." (Plaintiff's Ex. 2, R. 182)

During the evening of February 7, 1979, Carol told Louis that she had spoken with an attorney about a divorce. (R. 117) Carol and Louis then discussed a property division during which Louis drank an alcoholic beverage. (R. 178, 189, 190, 193, 194) Louis then went to his son's bedroom and obtained a .357 magnum revolver which he fired outside the home to demonstrate that it was loaded. (R. 179, 180, 234) Louis expressly and impliedly threatened Carol's life. (R. 184-188) He also forcibly disabled the telephone when Carol was talking to the "911" operator requesting police assistance. Carol fled to a neighbor's home where she called the Salt Lake Police Department for help. (R. 179, 180) (Findings, Nos. 6, 7 and 8)

After Carol fled, Louis went to his mother's house where he telephoned his home and spoke with his adult daughter, Karee. He convinced her that he was at the United Airlines

desk at the airport and that she should come immediately to the airport to meet him. (R. 187-189, 232-234)

Instead of meeting his daughter at the airport, Louis drove back to his home where he was spotted by Officer Lorraine Killpack who was then investigating the incident. Officer Killpack had correctly deduced that the "airport" call was a ruse to separate Karee from her mother. She encouraged Carol and Karee to go to a safe place. (R. 206, 207) Officer Killpack was assisted by Officers Frank Hatton-Ward and Gil Salazar, each driving in a separate patrol car. (R. 203)

The officers tried to stop and arrest Louis by verbal commands over their loudspeakers and with flashing lights and sirens. Louis failed and refused to respond to their commands. After a low-speed chase, Louis again drove to his home and pulled into the driveway where he was confronted by the three officers. (R. 135-138, 153-158, 208-210) Officer Hatton-Ward, standing at the open passenger-side window of Louis' vehicle with Officer Salazar standing to his immediate right, ordered Louis to put his gun down and freeze. Louis failed and refused to comply with these lawful commands. (R. 160-165) Instead he attempted to leave the vehicle in a way which Officers Hatton-Ward and Salazar believed was life

threatening. They both shot and killed Louis. (R. 143, 144, 149-151, 164-167) (Findings, Nos. 9-11, 13-16)

In a separate case before the Third Judicial District Court for Salt Lake County, a wrongful death action against Salt Lake City Corporation was brought for Louis' death. In that case the court ruled that as a matter of law the officers had the duty and right to arrest Louis under the existing circumstances. The jury held the offiers' conduct was reasonable and returned a defense verdict. This ruling and verdict were not appealed and the time for appeal has expired. (Findings, No. 12)

Carol Hoffman brought this action claiming that Louis suffered an accidental death. Life Insurance Company of North America denied coverage upon the ground that Louis' death was not accidental and therefore not within the insuring clause of the policy.

ARGUMENT

POINT I

LOUIS' DEATH WAS NOT ACCIDENTAL SINCE IT WAS THE NATURAL AND PROBABLE CONSEQUENCE OF HIS LIFE-THREATENING ACTIONS.

The primary issue is whether Louis' death was accidental. It would be accidental if it resulted "directly and independently of all other causes from bodily injuries caused by accident."

In reviewing claims for accidental death benefits, this Court has uniformly held that an accidental death is one which is reasonably unforeseeable, a death which is not the natural and probable consequence of the insured's actions.

A comprehensive explanation of this rule is found in Handley v. Mutual Life Insurance Company of New York, 106 Utah 184, 147 P.2d 319 (1944). There this Court was asked to determine whether a death following surgery was accidental under an insurance policy. In reviewing its longstanding definition of accidental death, the court indicated that the word "accidental" should be viewed in the relation of causes to their effects. Where a death is by actual design or the natural and probable consequence of the insured's actions, it is not accidental:

> An effect which is the natural and probable consequence of an act or course of action is not an accident, nor is it produced by accidental means. It is either the result of actual design, or it falls under the maxim that every man must be held to intend the natural and probable consequence of his deeds. 147 P.2d at 322.

This reasonable unforeseeability rule was recently applied in Elton v. Bankers Life and Casualty Company, 30 Utah 2d 213, 516 P.2d 165 (1973). There it was claimed that the insured's death from a heart attack was accidental. In again applying the reasonable unforeseeability rule, this Court held:

> "[A]ll of the definitions" of accident "include the idea that the means as well as the result must be unforeseen, involuntary, unexpected and unusual; that it must be a happening by chance." [Emphasis by the Court] 516 P.2d at 173.

Under Utah's long standing reasonable unforeseeability rule, appellant had the burden of proving that Louis' death was not the natural and probable consequence of his actions. Based upon the evidence, the trial court found that the contrary was true, that Louis' death was the natural and probable consequence of his actions. As this Court has recently reaffirmed, the standard for appellate review is whether the trial court's "findings are clearly against the weight of the evidence." Garcia v. Schwendimar, No. 17559 (Utah, April 1, 1982). Thus, unless appellant shows that this finding was clearly erroneous, it must stand.

Louis threatened his wife while brandishing a gun. Not only did he fire the gun, but he also forcibly disabled the telephone. He lied to his daughter both as to where he was and where he would meet her. When commanded by police officers to surrender, he refused and led them on a low-speed chase. When he finally stopped, he was commanded by the officers to drop his gun, which he refused to do. As observed by Officer Salazar, Louis pointed the gun at a fellow officer whereupon Salazar fired. As observed by Officer Hat-

ton-Ward, Louis moved in such a way that the officer could no longer see the gun. Believing that the gun was aimed where another officer was positioned, he shot. (R. 143, 144, 165-169). Based upon these uncontested facts, Louis' death was the natural and probable consequence of his actions. It was not an accidental death.

Appellant argues that Sanders v. Metropolitan Life Insurance Company, 104 Utah 75, 138 P.2d 239 (1943), compels the conclusion that Louis' death was accidental. In Sanders a 15-year-old boy had escaped from an Industrial School. While free, he burglarized a store and stole a car. While in the stolen automobile he and his 14-year-old companion, who was driving, were spotted by the Sheriff. While fleeing from the Sheriff, their car crashed resulting in their deaths. The court applied the reasonable unforeseeability rule noted in Handley and held that it could not be said that the boy's death was the natural and probable consequence of his being a passenger in a speeding car.[1]

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1 In Sanders the court also considered and rejected the insurance company's claim that as a matter of public policy recovery should not be allowed since the boy was violating the law at the time of his death. Respondent has not and does not advocate this theory.

The similarity between Sanders and the present case is two-fold. First, both cases involve an insured who was violating the law. However, this is not determinative of whether the death was accidental. Second, in both cases the standard applied was whether the death was the natural and probable consequence of the insured's actions. In Sanders the court found that death was not the natural and probable consequence of speeding. This is a well-recognized observation of many motorists. Although the risk or probability of an accident or collision probably increases when the speed limit is exceeded, there is not a high correlation of such effect. Thousands of motorists exceed the speed limit each day and none expect to be hurt or killed as a result. Arming oneself, threatening death or serious injury to another, refusing to respond to a peace officer's lawful commands and refusing to disarm on command is not a parallel action to exceeding a posted limit. The reasonably foreseeable consequences are vastly different. Therefore, the trial court found and the evidence supports a finding that Louis' death was the natural and probable consequence of his life threatening actions.

As stated in the annotation relied upon by appellant, recovery may be had under an accidental death policy even though the death occurred while violating the law only if it

is determined "that the circumstances were such that the insured could not reasonably have foreseen or expected the injury or death." 43 A.L.R. 3d 1120 at 1124.

Since Louis' death was the natural and probable consequence of his actions, it was not accidental.

POINT II

THAT THE POLICE OFFICERS INTENDED TO SHOOT LOUIS WHEN HE THREATENED THE LIVES OF OTHERS DOES NOT ESTABLISH AN ACCIDENTAL DEATH.

Appellant suggests that when "death [is] produced by the intentional conduct of those other than the insured," every jurisdiction considering the question has found such a death to be accidental. Appellant's Brief, p. 8. To the contrary, what the cases hold is that death caused by the intentional conduct of a third person does not preclude the possiblity that the death may have been accidental. As stated in the annotation relied upon by appellant, where a third person inflicts the injury or death, the question whether the death is accidental generally turns "on a determination of whether the insured, by his actions, should have reasonably expected the violent outcome." 49 A.L.R. 3d 673 at 678. This is but a restatement of the Utah rule requiring that the death not be the natural and probable consequence of the insured's actions.

POINT III

APPELLANT'S SUGGESTION THAT THE DEFINITION OF ACCIDENTAL DEATH BE REWRITTEN TO EXCLUDE ANY REFERENCE TO FORESEEABILITY IS CONTRARY TO THE LAW AND WITHOUT JUSTIFICATION.

Appellant takes the position that this Court's settled definition of accidental death should be rewritten to exclude any reference to foreseeability. It is suggested that the logic of Sanders requires this, even though the outcome in Sanders hinged on a finding based upon unexpected result. This revision of the law would require the repudiation of the "natural and probable consequence" definition of Handley, Sanders, Elton, and numerous other Utah cases. Appellant's rationale for such action is three-fold. First, it is claimed that the modern legal trend is to abandon this rule. Second, that the word "accidental" in insurance contracts is ambiguous and therefore should be construed against the insured. Third, foreseeability is a negligence doctrine which should not be mixed with insurance contract law. (Appellant's Brief pp. 10-12.)

With regard to the "modern legal trend" argument, it can hardly be said that a few courts adopting appellant's view in the last twenty years establishes a trend. All that it demonstrates is that a minority rule exists which is contrary

to the well-founded and long-established rule of this Court and, indeed the vast majority of jurisdictions.

Claiming ambiguity and thus challenging the reasonable unforeseeability requirement places the insurer in a position uncontemplated by the parties. Without the concept of reasonable unforeseeability, "accident" has no meaning. "Accident" insurance would be effectively eliminated. Under this approach, any death would be covered unless the precise cause of death were expressly excluded in the insurance policy. This would transform an accident policy into a life insurance policy, a result this Court rejected in Elton:

> The common acceptance of the term "accident" fortified, as it is, by a small premium in "accident" as opposed to "health and accident" policies and "life insurance" policies would seem to be about the only protection a commercial insurance company has against any industrial, lexicological or judicial alchemy that otherwise virtually would transmute a simple accident policy into a health policy or a life insurance policy. 516 P.2d at 172.

In any event, the term "accident" is not ambiguous. As observed in Elton, "all of the definitions" of accident include the idea of unforeseeability, a "happening by chance." 516 P.2d at 173. And, as stated in Handley, supra:

> This court has definitely gone on record as construing the provision under discussion and equivalent provisions as reaching cases where the death or disablement is the unexpected result . . . . 147 P.2d at 322.

The ambiguity argument and its untenable results have long

since been disposed of in Utah and do not now justify a departure from precedent.

As to the argument that since foreseeability is included in negligence law it therefore cannot be applied in contract law, it too is faulty. The concept of foreseeability cannot be limited to negligence law on a theory that foreseeability is an exclusive commodity that can only be used once in the law. The definition of accident includes the concept of foreseeability and should be so applied. Furthermore, if the foreseeability concept is limited to negligence law, then the application of this concept to lost profits, strict product liability, and other areas of the law is improper as well.

Furthermore, appellant's averred concern with confusion based upon concepts of contributory negligence and comparative fault are unjustified. The rule requires that the incident be examined from the position of the insured, that is whether the death is the natural and probable consequence of his actions. No reference is made in that definition to the intent or fault of others. Furthermore, there was no contributory negligence or comparative fault in this matter since, in a separate case, the police officers were not found to be negligent.

Appellant's attempts to reverse the long-standing Utah rule requiring reasonable unforeseeability in an accidental

death case is improper and should be rejected.

POINT IV

INSANITY DOES NOT CONVERT A NON-ACCIDENTAL DEATH INTO AN ACCIDENTAL DEATH.

A. LOUIS' CLAIMED MENTAL ILLNESS DID NOT PREVENT HIM FROM UNDERSTANDING THE MORAL CHARACTER, GENERAL NATURE AND CONSEQUENCES OF HIS LIFE THREATENING ACTIONS.

Appellant argues that Louis had a mental disease at the time he confronted the police officers which "deprived him of the ability to make rational decisions about the consequences of his actions or to control his behavior in a light of probable consequences of such conduct." (Appellant's Brief p. 13.) Appellant contends that this claimed mental illness converts what would otherwise be a non-accidental death into an accidental death.

The only testimony involving mental illness was that of Dr. Robert Mohr. (R. 112-132) Dr. Mohr testified that Louis was a high paranoid. He testified that by definition, a high paranoid is delusional in one area, but not others. Based upon his interviews with Louis and his prior acquaintance with him in waterfowl hunting, he concluded that Louis was familiar with the dangers and uses of firearms and that this knowledge would not have been clouded or deluded by his high paranoia. (R. 117-119) In view of this evidence, the trial court understandably made no finding that Louis had a

mental illness which rendered him unable to understand the moral character, general nature and consequences of his actions in refusing to surrender his gun, in taking life-threatening actions with it when confronted by armed police officers or in failing to understand the danger posed by the officers' guns.

As noted earlier, any reversal on this point, assuming the law is as applicant claims, requires a showing that the trial court's decision on the issue of the mental illness of Louis was clearly erroneous. Although appellant did not indicate in her argument what evidence she was relying upon to show that the trial court's decision was clearly erroneous, it is presumed that reference is being made to Dr. Mohr's opinion that Louis' high paranoia would have affected his emotional state during the events leading to his death. (R. 115-117) At no time was Dr. Mohr asked nor did he testify that when commanded to surrender his weapon, Louis would not have been able to understand the moral character, general nature and consequences of his actions. Nor did he indicate that Louis' actions would be the insane impulse of a disordered mind. To the contrary, Dr. Mohr testified that with regard to firearms and their dangers, Louis would not have been delusional. (R. 117-119)

Not only does the evidence fail to show that the trial court was clearly erroneous in not finding that the mental illness claimed by appellant was not such as to make his actions the insane impulse of a disordered mind, but the evidence establishes that such was not the case.

B. SINCE EVERY PERSON IS HELD TO INTEND THE NATURAL AND PROBABLE CONSEQUENCES OF THEIR ACTIONS, MENTAL ILLNESS DOES NOT HAVE ANY BEARING ON WHETHER AN ACCIDENT HAS OCCURRED.

Even assuming, for argument, that Louis was mentally ill and that his mental illness precluded him from recognizing the moral character, general nature and consequences of his life threatening actions, this does not make his death accidental. As indicated earlier, the long-standing Utah rule requires that the death not be the natural and probable consequence of the insured's actions. This definition places the emphasis on the actions of the insured, not his frame of mind. It is for this reason that this Court in Handley stated that a natural and probable consequence is either the "result of actual design, or falls under the maxim that every man must be held to intend the natural and probable consequences of his deeds." Put another way, the test is two-fold. First, would a reasonable person standing in the place of the decedent have foreseen the result. If so, the death was not accidental. In addition, if an insured actually in-

tended the result or had a physical ailment which made the result foreseeable, even though it would not have been a natural and probable consequence for an average or reasonable person, then the death would not have been accidental.

This latter point was noted in Kellogg v. California Western States Life Insurance Co., 201 P.2d 949 (Utah 1949). There the insured died from post-operative shock. Prior to the operation everything appeared normal. However, when the incision was made, seventeen critical adhesions were found that required considerable time and great care. The discovery of the adhesions made the insured a poor surgical risk. The trial court found that this death was not accidental. In affirming, this Court relied on the rule in Handley and held that although under the first part of the Handley test the death would be accidental, under the second part of the test there were special conditions which made the insured's death expected. The court did not abandon the maxim that every man must be held to intend the natural and probable consequence of his deeds. The court simply held that the insured's condition made what would ordinarily have been an accidental death into a non-accidental death. This is the converse to what appellant now seeks.

As discussed earlier, this concept of accidental death being a death not the natural and probable consequence of the

insured's actions is the distinguishing feature between an accident policy and a life or health policy. If, as appellant argues, a mental illness shifts the emphasis from a focus on actions to mental capacity, the definition would be changed. The change would be such that a person with a mental illness would have his accidental death insurance policy converted to a life insurance policy for death resulting from his actions. For the same small premium, he would have far more extensive coverage than a sane individual. As indicated in Elton, supra, the term accident should not be transmuted by "judicial alchemy" so that an accident policy becomes a life insurance policy.

Appellant discusses two cases in support of her theory. In the first, Kobylakiewicz v. Prudental Insurance Company of North America, 180 A. 491 (N.J. 1935), the insured had been confined to a state hospital for the insane. Within a short time after his release, he became very violent and threatened his family. When the police attempted to arrest him, the insured rushed them with a pick axe acting like a "wildman." In the attempt to arrest him, he was shot and killed. The court there found that the insured's death was accidental. However, the basis for that decision was not an exception to the rule discussed in Handley. The court there noted that in New Jersey an accident is an event that takes place without

the insured's foresight or expectation. In other words, a subjective test was used rather than the objective test followed in Handley and the other Utah cases. Under such a test, the insured's mental capacity would be relevant. Since this is not the rule in Utah, the case is irrelevant.

The second case cited by the appellant is Continental Casualty Company v. Maguire, 471 P.2d 636 (Colo. App. 1970). There the insured had been hospitalized for mental illness four times in the ten years preceding his injury. After his last release, he threatened his wife with a gun. When the police attempted to pursuade him to surrender, he shot and inflicted superficial wounds on an officer. The police responded by firing ten tear gas canisters into his home, one of which exploded in his face and blinded him. The court found the injuries to be accidental on three grounds. First, the insured was not engaged in aggressive acts at the time the canister exploded in his eyes. Second, it was never intended that the teargas cansiter should injure him. Third, the court found that he was insane at the time and therefore did not have the ability to recognize the moral character, general nature and consequences of his actions. In so finding, the court relied on Kobylakiewicz. Although appellant suggests that Colorado follows the Utah rule, such is not the case. As noted in Reed v. United States Fidelity and Guaran-

ty Company, 491 P.2d 1377 (Colo. 1971), Colorado follows a test in which an event is accidental if it is not the natural or probable consequence of the means which produced it or which the actor did not intend to produce. Although the first part of the Colorado test is similar to the Utah test, the second part, on which the court relied, is contrary to the Utah rule. It is the same subjective standard applied in Kobylakiewicz. This case is also irrelevant.

Where courts have adopted the same rule which has been applied in Utah, the courts have held that the mental state of the insured is irrelevant in determining whether an accident has occurred. This was pointed out in Carlyle v. Equity Benefit Life Insurance Company, 551 P.2d 663 (Ct. App. Okla. 1976). There the insured was killed while committing an armed robbery. The trial court held that his death was not accidental. In affirming this decision, the appellate court reviewed the various jurisdictions on this issue. The court noted that a minority of jurisdictions apply a subjective test which make the mental state of the insured relevant. The court went on to note and accept the majority position requiring the objective standard of reasonable unforeseeability:

> The majority of courts, on the other hand, tend to pay less attention to the assumed mental state of the insured and evaluate the facts and circumstances from

> the viewpoint of a reasonable person. The conclusion usually reached is that death is just too likely, too foreseeable, too natural a consequence of a serious law violation to justify the contention that it was the result of an accident. 551 P.2d at 666.

The Utah rule requiring the application of an objective test is not altered by any finding that the insured was not capable of understanding the moral character, general nature and consequences of his actions.

CONCLUSION

Louis Hoffman's death was the natural and probable consequence of his refusal to surrender his gun and his life-threatening actions with the gun. It was not accidental. The Judgment of the Trial Court should be affirmed.

Dated this ____ day of May, 1982.

SNOW, CHRISTENSEN & MARTINEAU

By _____
H. James Clegg

By _____
Henry K. Chai II

CERTIFICATE OF SERVICE

I certify that I served two copies of this Brief on David Eckersley of Houpt & Eckersley, Attorneys for Plaintiff and Appellant, 510 Judge Building, 8 East Broadway, Salt Lake City, Utah 84111 on May 10, 1982; placing the same in a pre-addressed envelope and depositing it in the United States Mail, first class postage prepaid.

Henry K. Chai II